

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

UNITED STATES OF AMERICA,)	Criminal Case No. 3:08cr00042-1
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
TONY LLOYD JOHNSTON.)	By: Norman K. Moon
)	United States District Judge

In accordance with this court's memorandum opinion entered this day, it is **ORDERED** and **ADJUDGED** that Johnston's motion (Docket No. 104) is **CONSTRUED** as a motion to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255, and the Clerk is directed to **FILE** the motion as such; the § 2255 motion is **DISMISSED without prejudice** as successive; and the case is **STRICKEN** from the active docket.

Further, the court finds that Johnston has not made the requisite showing of the substantial denial of a constitutional right as required by 28 U.S.C. § 2253(c) and, therefore, a certificate of appealability is **DENIED**.

ENTER: This 23rd day of August, 2012.



NORMAN K. MOON
UNITED STATES DISTRICT JUDGE